



# Liability and Other Guidance

Outreach and Special Projects Staff (5101)

Quick Reference Fact Sheet

**EPA's** Brownfields Economic Redevelopment Initiative is designed to empower States, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields. A brownfield is a site, or portion thereof, that has actual or perceived contamination and an active potential for redevelopment or reuse. EPA's Brownfields Initiative strategies include funding pilot programs and other research efforts, clarifying liability issues, entering into partnerships, conducting outreach activities, developing job training programs, and addressing environmental justice concerns.

## OVERVIEW

EPA has been working with States and municipalities to develop guidance that will provide some assurance that, under specified circumstances, prospective purchasers, lenders, and property owners do not need to be concerned with Superfund liability. These guidance clarify the liability of certain parties' association with and activities at a site, and clearly state EPA's decision to use its enforcement discretion not to pursue such parties. EPA anticipates that these clear statements of the Agency's position will alleviate any concerns parties may have in becoming involved in the cleanup and redevelopment of previously used properties.

## ACTIVITIES

EPA has developed the following guidance to address specific liability concerns.

- EPA issued a general policy statement regarding the liability of owners of uncontaminated property containing groundwater that has been contaminated by a neighboring property. This policy statement provides assurance that EPA does not anticipate suing the property owner for groundwater contamination if the owner did not cause or contribute to the contamination.
- EPA issued guidance regarding the increased consideration of anticipated future land uses in remedy selection decisions at National Priorities

List (NPL) sites. The guidance encourages discussions among local land use planning authorities, other officials, and the community as early as possible in the site assessment process.

- EPA issued guidance that expands the circumstances under which EPA will enter into Prospective Purchaser Agreements. The guidance states the conditions under which EPA will not sue prospective purchasers for contamination that existed before the purchase.
- EPA issued the Policy on CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntary which outlines criteria for determining when lenders and municipalities are exempt from CERCLA enforcement provisions. The guidance was subsumed in large measure by the September 30, 1996 "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996."
- EPA issued a policy on the use of Comfort/Status Letters to assist parties who seek to clean up and reuse brownfields properties. The policy contains four sample comfort/status letters that address the most common inquiries for information EPA receives regarding contaminated or potentially contaminated property. The letters are intended solely for informational purposes; they relate only to EPA's intent to exercise its response and enforcement authorities under Superfund at a particular property based on information presently known by EPA about that property. The letters do

not provide a release from CERCLA liability and are not considered an assurance that no action will be taken under Superfund law at the property (i.e., no action assurance).

- EPA issued a model comfort letter for closing military bases that addresses various issues concerning perceived National Priorities List (NPL) stigmas and Superfund liability. The letter clarifies some common misunderstandings about NPL listing and CERCLA liability and highlights certain provisions concerning Federal property transfer. Additionally, it states that parcels of military bases identified as uncontaminated under the Community Environmental Response Facilitation Act (CERFA) are not part of the NPL listing.
- The Office of the Comptroller of Currency issued guidance that revises Community Reinvestment Act (CRA) credit guidelines to include giving credit to banks that provide loans for assessment, cleanup, or redevelopment of brownfields.
- EPA issued soil screening guidance to help decision-makers quickly determine which portions of a site require further study, and which pose little risk to human health and therefore may be ready for development without extensive cleanup.
- EPA issued a rule that limits the regulatory obligations of financial institutions and others who hold security interests in property on which petroleum Underground Storage Tanks are located. (NOTE: See The “Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996.”)
- EPA issued a military base closure guidance that addresses the approach EPA should use in determining whether to concur that a parcel has been properly identified by the military service as “uncontaminated” and, therefore, is transferable pursuant to CERCLA Section 120(h)(4).

- EPA’s State and Tribal Deferral Program is intended to encourage qualified, interested States to address, under State laws, the large number of sites now in EPA’s listing queue in order to accelerate cleanup, minimize duplicative State/Federal efforts, and offer potentially responsible parties (PRPs) a measure of confidence that only one agency will address the site.

## NEW LEGISLATION

On September 30, 1996, as a part of the Omnibus Appropriations Bill for Fiscal Year 1997, Congress passed and the President signed into law the “Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996” (the Act). The Act includes lender and fiduciary liability amendments to CERCLA, amendments to the secured creditor exemption set forth in Subtitle I to RCRA, and validation of the portion of the CERCLA Lender Liability Rule that addresses involuntary acquisitions by government entities. These amendments made by the Act apply to all claims not finally adjudicated as of September 30, 1996, which include all cases that are in the process of being settled. In 1997, EPA will issue a Fact Sheet that describes in more detail the impact of the Act, how it differs from EPA policy, and the portions of EPA policy that were left unaddressed by the Act.

In addition to specific guidance, EPA is exploring other ways to address the fear that affected parties have about incurring Superfund liability at previously used properties. This analysis will form the basis for future guidance, mapping out the relationship between the types of sites and situation encountered as a result of the Superfund liability scheme’s effect on redevelopment.

## CONTACT

Bruce Pumphrey  
U.S. EPA - OECA  
(202) 564-6076